

**Declaration Of Austin Gerken In Support Of Trout Unlimited, Public Employees For Environmental Responsibility And Wild South's Motion To Intervene As Defendants**

## DECLARATION OF AUSTIN GERKEN

1. My name is Austin Gerken. I am over the age of twenty-one, am competent to give testimony, and have personal knowledge of the facts stated herein.
2. I am a senior attorney with the Southern Environmental Law Center and I serve as counsel for Trout Unlimited, Public Employees for Environmental Responsibility and Wild South in their efforts to address degradation of water quality and trout habitat caused by the use and inadequate maintenance of the Tellico Off-Road Vehicle (“ORV”) Area.
3. In my capacity as counsel for Trout Unlimited, Public Employees for Environmental Responsibility and Wild South I have prepared written comments on a number of administrative proposals for the management of the Tellico ORV Area. My colleague, Douglas Ruley, and I also have represented their interests in a number of meetings with the Forest Service and ORV user groups.
4. Attached to this declaration as Exhibit 1 is a true and correct copy of pages excerpted from the document *Transportation System and Related Recreation Management Actions for the Upper Tellico Off-Highway Vehicle System* prepared by the National Forests in North Carolina and dated October 2009. For the sake of brevity, only pages 1-88 of the 250 page document are attached. The full document and its appendices are available for download from the Forest Service website:  
<http://www.cs.unca.edu/nfsnc/nepa/tusquitee/tellico.htm>.
5. Attached to this declaration as Exhibit 2 is a true and correct copy of a document entitled *A Summary of Wild trout Population Monitoring in the Tellico River Watershed, 1994-2006* prepared by the North Carolina Wildlife Resources Commission,

Division of Inland Fisheries and dated 2007. This document was provided to me upon my request by employees of the North Carolina Wildlife Resources Commission in August of 2007.

6. Attached to this declaration as Exhibit 3 is a true and correct copy of the 60-day Notice of Intent to sue sent by me to the Forest Service on June 28, 2007 on behalf of Trout Unlimited, Public Employees for Environmental Responsibility and Wild South.

7. Attached to this declaration as Exhibit 4 is a true and correct copy of the comment letter submitted by me on behalf of the Wild South, North Carolina Council of Trout Unlimited, Tennessee Council of Trout Unlimited, and Public Employees for Environmental Responsibility on March 31, 2009 in response to the Forest Service's draft environmental assessment released in February of 2009.

8. Attached to this declaration as Exhibit 5 is a true and correct copy of a Decision Notice and Finding of No Significant Impact dated October 14, 2009 issued by Marisue Hilliard, Forest Supervisor for the National Forests in North Carolina. This document was sent to me by the Forest Service.

9. Attached to this declaration as Exhibit 6 is a true and correct copy of a Contractor Solicitation, dated April 19, 2010, issued by the Forest Service. This document is available for download from the federal business opportunity website at: [https://www.fbo.gov/index?s=opportunity&mode=form&id=590ea329b7759a7794ca19a2396949f6&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=590ea329b7759a7794ca19a2396949f6&tab=core&_cview=1).

I declare under penalty of perjury that the foregoing is true and correct.

June 17, 2010



Austin D. Gerken Jr. (N.C. Bar 32689)